IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2776 of 1996
With
FIRST APPEAL No. 2778 of 1996
With
FIRST APPEAL No. 2789 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL AMBARAM RAMDAS - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Defendant(s)

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Appearance :

MR YOGENDRA THAKORE For MR PRAKASH K JANI for Appellant(s) : 1,
MR UDAY BHATT A.G.P. for Defendant(s) : 1,
MR YN OZA for Defendant(s) : 1,
MR AJAY R MEHTA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 26/02/2007

ORAL COMMON JUDGMENT

1. These appeals arise from the common judgment and award made by the 3rd Joint District Judge, Mehsana dated 29th November, 1994, in Land Acquisition Reference Case No. 39/1988, 41/1988 and 7/1994. Hence, they are heard together and now they are being disposed of by this common judgment.

2. The appellants have approached this Court for seeking enhancement of the compensation for the temporary occupation of the lands made under Section 35 of the Land Acquisition Act [hereinafter referred to as the “Act”] by respondent no. 2, against the demand of Rs.200=00 per Are per annum. The Reference Court has granted Rs.100=00 per Are per annum, which according to the appellants is inadequate. The lands in question are agricultural lands and they are situated at village Kasalpur [hereinafter referred to as the “land”]. The land was required for the purpose of drilling wells for exploring the possibility of oil. The Project Manager, respondent no. 2, therefore, made a proposal dated 3rd June, 1985 for temporary acquisition under Section 35 of the Act. On receipt of the proposal and upon satisfying that there was need to occupy the land for temporary period, respondent no. 1, directed the Collector to complete all the formalities to occupy the land. The Special Land Acquisition Officer, in

pursuance of the said decision complied with necessary formalities and made award on 6th December, 1985. Before that, the possession of the land was taken by the Land Acquisition Officer, by private negotiations on 17th September, 1985. The possession was taken for a period of one year. The Special Land Acquisition Officer, determined the compensation at Rs.50=00 per Are per annum. Since there was difference as to sufficiency of the possession, the Collector made Reference Under Section 35 (3) of the Act to the Court for its decision. Before the Court, the parties produced evidence, oral as well as documentary. The Court, however, arrived at a conclusion that there was no evidence produced by the appellants. Nevertheless, it enhanced the compensation from Rs.50=00 per Are per annum to Rs.100=00 per Are per annum against the claim of Rs.200=00 per Are per annum. Hence, these appeals.

3. I have heard learned advocate Mr. Yogendra Thakore for Mr. P.K. Jani learned advocate for the appellants, Mr. Uday Bhatt learned A.G.P., for respondent no. 1 and Mr. Ajay Mehta learned advocate for respondent no. 2. During the course of submissions, Mr. Thakore made oral application under Order 41 Rule 27 of the Civil Procedure Code for production of additional

evidence in the form of judgment delivered by 2nd Joint District Judge, Mehsana in Land Reference Case No. 208/1990 and its allied matters. According to him, the subject matter of the case was agricultural land situated at village Kasalpur and which was temporarily acquired and occupied for this very purpose by respondent no. 2, around same time. He has submitted that in these cases, the Court determined compensation at Rs.200=00 per Are per annum. According to him the judgment and award of the Court were pronounced subsequently and, therefore, the said could not be produced at the time of trial. In his submissions this is a relevant document which may enable the Court to pronounce the judgment. He has also submitted that even for substantial cause, so as to avoid any discrimination, the Court may take it on record. Mr. Mehta has of course opposed this oral application. However, considering the facts and circumstances of the case, and in particular the fact that the judgment and award produced by Mr. Thakore were not available to the appellants at the time when the impugned judgment was delivered, the appellants could not produce it before the Reference Court. Further considering the fact that in the present case, the possession has been taken on 17th September, 1985, in those cases, the possession was taken on 20th August, 1985. It was almost contemporary and the

lands were acquired for the said purpose. The document namely, the judgment and award will be most relevant evidence and it will enable this Court to pronounce the proper judgment. Further it also appears that the certified copy of the judgment and award are required to be taken on record for substantial cause. When I find that the requisites of Order 41 Rule 27 of the Civil Procedure Code are satisfied this Court can grant permission for production of the additional evidence and it is hereby granted. The document is ordered to be taken on record and now it forms part of the evidence.

4. It is further submitted by Mr. Thakore that the learned Judge has failed to appreciate that the oral evidence of claimant of Reference Case no. 6/1994 is cogent and reliable, but the Court has without any justifying reasons discarded it. According to him, the proper compensation is Rs.200=00 per Are per annum. As against that Mr. Mehta has supported the judgment of the Reference Court and has submitted that there is no temporary evidence to substantiate the oral say of witness Nathabhai Khodabhai. He has further submitted that there is no reliable evidence with regard to income derived by the appellants for its agricultural produce and, therefore, the Court was justified in granting

compensation at the rate of Rs.100=00 per Are per annum. Mr. Mehta has submitted that the Reference Court has committed an error in awarding enhanced compensation for the entire period of possession. According to him, it could only be for one year i.e., the period agreed upon by the parties or maximum for three years under Section 35 of the Act.

5. Having considered the rival submissions and having perused the record, it appears that there is no dispute that the agricultural land of the appellants was required under Section 35 of the Act, since 17th June, 1985. It was an agreement for one year. It of course appears that the land has not been vacated and the possession has not been handed over to the appellants till today. Respondent no. 2 has retained the possession even after the expiry of the stipulated period. The important question is whether the compensation determined by the Reference Court is adequate.

5.1. Nathabhai Khodabhai witness no. 1 for the appellants has given evidence at Exh. 8. He has stated that he had deposed on behalf of all the original claimants. According to him, they obtained crop in all the three seasons. He has further stated that the land

was fertile land and they had facility of irrigation. According to him, fruit bearing trees were also standing on the land. He has stated that the claimants obtained the crop of chillies, onions etc. There were lemon trees as well as trees of jack-fruit and blue berry. According to the witness, the annual income was Rs.20,000=00 after deducting the expenses. He has stated that the expenditure would be around 10%. In the cross examination he has stated that he did not have any documentary proof to substantiate his say. He has however, denied the suggestions that they obtained only one crop during the season. There is no effective and serious cross-examination of this witness.

5.2. Haribhai Ambalal Patel is examined as witness no. 2 by the appellant. He was asked to act as panch by respondent no. 2. According to him, the land would yield Rs.50,000=00 to Rs.60,000=00 per year. He has of course, denied the suggestions that he was not telling the truth regarding the income of the appellant. He has produced the panchnama which is at Exh. 10.

6. As against that, one Sharadchandra Vasantray Gole has been examined by the respondents. His evidence is at Exh. 21. He has no personal knowledge about the

acquisition. He has stated that the compensation determined by the Special Land Acquisition Officer was adequate. This is oral evidence. So far as the say of the appellant is concerned, which is reflected in the evidence of Nathabhai Khodabhai, it gets due support from the judgment and award made by 2nd Joint District Judge, Mehsana in Land Acquisition Reference Case no. 208/1990 and its allied matters. In that case, the Court, keeping in view the evidence on record as well as the award in respect of the lands situated at village Kasalpur in Kadi Taluka determined the compensation at the rate of Rs.200=00 per Are per annum i.e., Rs.2=00 per sq. mtr. Thus, the finding given by this Court is purely on the basis of the facts which have appeared in this case.

6.1. So far as the enhancement of the compensation is concerned, the submissions made by Mr. Mehta to the effect that it shall have limited application is required to be accepted. In his submission, it can only for a period of one year i.e., the period under the agreement or at the most the statutory period i.e., three years as prescribed in Section 35 of the Act. Though such contention has not been raised in the trial Court, nor any cross appeal is filed or cross objections, but considering the fact that it is purely legal submission,

and it is within the power of this Court, which is a Court of Appeal, as per the provisions of Order 41 Rule 33 of the Civil Procedure Code, it can pass appropriate order in appeal as the facts of the case may require. The provisions of Section 35 can remain in force maximum for a period of three years and not beyond that since this is temporary acquisition. In the facts and circumstances of the case, the acquisition has been made only for a period of one year. The statute has prescribed maximum period of three years. The copy of the agreement is not on record but then the maximum period under Section 35 of the Act is taken to be ultimate limit, the enhanced compensation would cover only the period of three years and not beyond it. Hence, the submission of Mr. Mehta is required to be accepted.

7. In the result, the judgment and award made by the Reference Court is quashed and set aside. The rate of compensation is enhanced i.e., enhancement of additional Rs.200=00 per Are per annum instead of Rs.100=00 per Are per annum together with interest at the rate of 9% per annum for the period aforesaid and costs as decided by the Reference Court. The enhanced rate would apply only for a period of three years commencing from the date of the possession i.e.. 17th September, 1985.

8. In the result, the appeals are partly allowed.

R & P to be re-transmitted to the Reference Court forthwith.

[Akshay H. Mehta, J.]

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